SUICIDE AND THE LAW.[1]

CATO the Younger, who is probably the most illustrious of suicides, upon the eve of his act discoursed with much vehemence in justification of the right "to set himself at liberty." Cato's view has been assumed as self-evidently true by all nations and tribes that have not received a strong influence from Christianity. Shall a man not be permitted to do as he wills with his own? And what is more essentially his own than his life? In American constitutional law nothing is more jealously guarded than personal liberty. A sane person may not be imprisoned save for crime or coerced except in respects obviously necessary for the public weal. How then may the state assume to interfere with the most radical act of self-liberation? How, with any semblance of consistency, may one be deterred from abandoning a life of suffering or abject despair or hopeless ennui? Undoubtedly the logic of the situation is with Cato and the pagans to whom suicide itself never suggested any idea of turpitude, it being held immoral only if, and in so far as, some collateral feature, such as cowardice, characterized it. The sentiment against suicide which generally prevails among Christians and Mohammedans constitutes one of the most signal moral accomplishments of Christianity, or rather of the Christian church. It is nowhere condemned in the Bible, though it is expressly inhibited in the Koran, Mohammedanism having "on this as on many other points borrowed its teaching from the Christian church, and even intensified it." "The Christian theologians introduced into the sphere we are considering new elements both of terrorism and of persuasion, which have had a decisive influence upon the judgments of mankind. They carried their doctrine of the sanctity of human life to such a point that they maintained dogmatically that a man who destroys his own life has committed a crime similar both in kind and magnitude to that of an ordinary murderer, and they at the same time gave a new character to death by their doctrines concerning its penal nature and concerning the future destinies of the soul."[2] To the many illustrations given by Mr. Lecky of the

[1] Address delivered before the New York State Bar Association, January 20, 1904.

[2] Lecky's Hist. of European Morals, vol. 2, p. 45.

effectual inculcation by the church of its absolute policy there may be added the history of the Jesuits in North America, graphically narrated by Parkman. In their mission of converting the North American Indians many priests of that order were subjected to lingering death by unspeakable torture, which certainly, without the presence of the strongest kind of arbitrary scruples, would have led to numerous suicides. The anti-suicide sentiment generated by the Christian church very naturally was embodied in the English common law. Blackstone states the legal attitude as follows:

"The law of England wisely and religiously considers that no man hath a power to destroy life, but by commission from God, the author of it; and, as the suicide is guilty of a double offense, one spiritual, in invading the prerogative of the Almighty, and rushing into his immediate presence uncalled for; the other temporal, against the king, who hath an interest in the preservation of all his subjects; the law has therefore ranked this among the highest crimes, making it a peculiar species of felony, a felony committed on one's self. . . . But now the question follows, what punishment can human laws inflict on one who has withdrawn himself from their reach? They can only act upon what he has left behind him, his reputation and fortune; on the former, by an ignominious burial in the highway, with a stake driven through his body; on the latter by a forfeiture of all his goods and chattels to the king; hoping that his care for either his own reputation or the welfare of his family would be some motive to restrain him from so desperate and wicked an act."[1]

Among the Romans the legend of the suicide of the matron Lucretia was considered to hold up a worthy ideal. Even under Christianity there was a strong tendency in the days of the early church to excuse, and thereby indirectly countenance, suicide by women in order to escape violation of their chastity. After giving several instances of this class, Mr. Lecky remarks: "Some Protestant controversialists have been scandalized, and some Catholic controversialists perplexed, by the undisguised admiration with which the early ecclesiastical writers narrate these histories. To those who have not suffered theological opinions to destroy all their natural sense of nobility it will need no defense." Noble, doubtless, these women were, according to the standard of their age, but not less noble and much more rational have been hundreds of women during late years who, suffering the most revolting outrage, have nevertheless realized that a person can be really

[1] 4 Bl. Com. c. 14.

disgraced only through her own act. The recent history of the offenses against women, especially by negroes, in this country discloses sane and creditable conceptions of self-respect in that few, if any, cases of suicide of victims have been reported.

Cato may be taken as the general type of suicides to escape mental suffering. His frame of mind is one that once, or oftener, during life suggests itself to a goodly proportion of humanity. The occasional suicides of children through fear of parental reprimand or punishment, the comparatively frequent suicides of youths of both sexes from unrequited love, the still more common suicides of middle-aged persons because of financial embarrassment, and, most pathetic of all, the by no means rare suicides of elderly persons who lay down the burden of their own lives, realizing that *ipso facto* they lift a burden from the lives of others — the limitless variety of cases of consummated suicide indicates that dalliance with the thought of self-destruction is well-nigh universal. In the vast majority of instances the apparent mountain of anguish would seem but a molehill of temporary embarrassment in the perspective of a long life. If the momentary impulse be resisted the unfortunate or discouraged one will have many years of average felicity in which to congratulate himself on his self-control. To the end of helping him bear the ills he has, a strong popular sentiment is of great efficacy. It is of public as well as personal advantage to have suicide in general regarded as immoral, cowardly, and disgraceful. The individual's attitude towards suicide, as towards all ethical matters, is largely influenced by the standards of his age and the moral atmosphere that surrounds him. General history has recorded many local and some quite extensive epidemics of suicide. It is certainly a proper function of the pulpit, the press — all the didactic agencies of the community — strenuously to maintain the Christian attitude and to discountenance the let-alone policy of Cato and the pagans.

In the present state of intelligence, however, no good can result from adherence to the dogma of the absolute sinfulness of suicide. It has already been shown that even the early church was unable to enforce its rigid policy against suicide to escape violation of chastity. A similar difficulty arose as to certain cases of voluntary martyrdom where Christian fanatics, with precisely the same spirit and motive of dervishes in the East at the present day, rushed upon certain death at the hands of their persecutors, or implored death from pagan judges in order to enter immediately

into the joys of paradise. The church found it impossible to stifle admiration for suicides of that class. There is just one condition which safely may be tolerated by public opinion as a justification of suicide. That condition is the most simple and primitive one — the one that has been recognized by all systems save the Christian church. If a person be facing certain death, which must be preceded by excruciating physical pain, his suicide may be viewed without reproach. The inducement to suicide in such cases has been largely obviated by modern medicine, whose anodynes are freely used to deaden suffering, often, incidentally at least, shortening life. In her entertaining book, "Boots and Saddles," Mrs. Custer tells of journeys she made through regions infested with hostile Indians, and says:

"I had been a subject of conversation among the officers, being the only woman who, as a rule, followed the regiment, and, without discussing it much in my presence, the universal understanding was that anyone having me in charge in an emergency where there was imminent danger of my capture should shoot me instantly. While I knew that I was defended by strong hands and brave hearts, the thought of the double danger always flashed into my mind when we were in jeopardy."

If she had been thus killed, or in the event of the officer in charge being disabled or captured had killed herself, to escape a lingering death at the stake, it would certainly have been a great boon to her, and the infection of her example would not have spread to persons who ought to continue the struggle of life though worsted for the time. But the line must be drawn with the avoiding of physical torture which is a prelude to certain death from causes outside the victim's will. If exceptions were allowed in favor of some forms of acute mental suffering, private judgment would speedily come to be asserted as against the general dissuadent sentiment and the paganistic attitude would be revived.

There has been much discussion whether, and how far, the law may legitimately take cognizance of suicide; and first may be considered one phase of the subject as to which there is strong need of legal intervention. Blackstone, as we have seen, characterizes suicide as a "peculiar species of felony," and considerable legal casuistry has been expended on the question whether suicide does, or does not, constitute murder. It is unnecessary to enter here into the technical arguments *pro* and *con;* suffice it to say that the strong consensus of English professional opinion is that suicide is

murder, and, therefore, that accessories and abettors are also guilty of the crime.[1] Owing, however, to a technical rule that accessories to any crime could not be tried before the principal, the former escaped.

This anomaly was obviated by a statute passed early in the reign of Victoria, so that now one who persuades or assists another to commit suicide may be convicted and punished as a principal in the second degree, or an accessory. In many of the states of the American Union the law upon abetting suicide is in most unsatisfactory condition; indeed, there is no law at all.

The criminal law had been a powerful engine of tyranny under George III and his predecessors. Next to the bugbear of the establishment of a monarchy, there was no subject that more strongly exercised the minds of the fathers than strictly circumscribing the domain of penal jurisprudence. The same spirit animated the judges in construing the laws, and there grew up a narrow, technical policy of legal administration which gave a criminal defendant the benefit of every possible quibble. This attitude is now slowly passing away, but even yet criminal defendants everywhere in this country have more than a fair chance of escape from legal toils. Most of the states have codified their criminal law, and some of them have provided that no one shall be punished for any act or omission unless the same is made a penal offence. Even where a positive clause to the effect is not inserted, courts have tended to hold that no act is a crime unless definitely declared to be one by statute. The courts of some states where the question has come up have refused to class suicide as murder, and, as there were no provisions specifically covering suicide, abettors and accessories have gone scot free. Those courts might easily have adopted the English view that suicide is murder, and as such comprehended by the statutes; and probably the principal motive for not doing so was the general policy of favoritism to criminal defendants.

There is, however, a deeper reason, which may practically justify such judicial attitude. A certain symmetry and consistency must be preserved in jurisprudence, and if suicide were murder, an attempt might have to be classed as an attempt to commit murder, and punishable as such. The Supreme Court of

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[1] See an article entitled "Is Suicide Murder?" by William E. Mikell, 3 Col. L. Rev. 380.

Illinois, in the recent case of Burnett *v.* People,[1] suggests a theory upon which an abettor of suicide may be held liable as a principal criminal.

The following language from the opinion is of general interest:

"The English common law, as applied to accessories before and at the fact, has become more a form than a substance under our law. From an early day we held that under our statute the accessory before and at the fact could be indicted as a principal (Baxter *v.* People, &c., 3 Gilman, 368), and in two cases where the question was directly presented we held that it was improper to indict an accessory simply as such, as was done at common law, but that he must be indicted as principal (Usselton *v.* People, &c., 149 Ill. 612, 36 N. E. Rep. 952; Fixmer *v.* People, &c., 153 Ill. 123, 38 N. E. Rep. 667). As to the crime of murder, we have applied the rule that he who acts by another acts by himself, and that the acts of the principal are the acts of the accessory, and that the latter may be charged with having done the acts himself, and may be indicted and punished accordingly (Spies *v.* People, &c., 122 Ill. 1, 12 N. E. Rep. 865, 17 N. E. Rep. 898, 3 Am. St. Rep. 320). If a lunatic or an idiot, at the instigation or direction of another person, should commit a homicide, none would question but that the instigator and director in such case would be guilty of murder, although the principal could not be punished at all; and if A, by virtue of deceit or persuasion, induce B to kill himself, this is as much the act of A as though A had induced C to kill B. The charge in the second count of the indictment is that plaintiff in error did 'hire, persuade, and procure' the deceased to kill herself, and, if he did either of these, and as a result thereof deceased did kill herself, it was the act of plaintiff in error, and we have no hesitancy in pronouncing it murder if the element of malice is found."

The court — very properly, as it would seem from the printed report — reversed the conviction of murder, principally upon the ground that the evidence — consisting largely of admissions or confessions of the prisoner when he may have been mentally incapacitated from the effect of narcotics or stimulants — was insufficient. This Illinois case resembles on the facts the New York case of People *v.* Kent,[2] where a conviction of manslaughter in the first degree in abetting suicide, under the New York statute,[3] was held not to call for a certificate of reasonable doubt, the confessions of the prisoner, although he may have been under the influence of drugs, being competent and, with the other evidence, adequate.

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[1] 68 N. E. Rep., 505.

[2] 41 Misc. 191.

[3] § 175, Penal Code.

The Illinois case makes use of something analogous to the theory of agency in the civil law, in order to hold an abettor of suicide a principal criminal. The court cites, and to an extent relies upon, the case of Blackburn *v.* Ohio,[1] where the same theory of guilt was implied. In the Ohio case, however, while it was held that the act of the suicide in swallowing poison in the presence of the defendant "and by his direction was his act of administering it," it expressly appeared that there was evidence "tending to show that the defendant, by threats, forced the woman to take the poison."

In contradistinction to these cases there is the comparatively recent utterance of the Court of Criminal Appeals of Texas in Grace *v.* State,[2] as follows:

"Whatever may have been the law in England, or whatever that law may be now with reference to suicides, and the punishment of persons connected with the suicide, by furnishing the means or other agencies, it does not obtain in Texas. So far as the law is concerned, the suicide is innocent; therefore, the party who furnishes the means to the suicide must also be innocent of violating the law. We have no statute denouncing suicidal acts; nor does our law denounce a punishment against those who furnish a suicide with the means by which the suicide takes his own life."

The action of the Illinois court in invoking the doctrine of agency is, of course, commendable in order not to suffer one who may be potentially a murderer to escape; but it is highly probable that other courts besides those of Texas will not see the way clear to adopt such an expedient. Moreover, a very considerable degree of positive and personal participation in the act of suicide would probably be required in order to sustain a conviction upon the theory that the defendant was the initiator of and morally responsible for the homicide committed through the agency of his victim. In Blackburn *v.* Ohio, as above shown, there was evidence that the defendant forced the suicide to take the poison by threats. Under the New York statute,[3] on the other hand, such a strong case on the facts would not be required, a person being guilty of manslaughter in the first degree "who willfully, in any manner, advises, encourages, abets, or assists another person in taking the latter's life." It is doubtful whether the doctrine of the Illinois case could be stretched to cover instances where the project of suicide originated with the suicide himself, and the abettor went no further than to encourage and assist.

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[1] 23 Oh. St. 146. [2] 69 S. W. Rep. 529. [3] *Supra.*

The states of New York and Missouri have dealt with the situation in a very direct and efficacious manner. Statutes have been passed making the abetting of suicide and the abetting of attempts at suicide independent crimes, punishable by severe penalties. Under the New York statute, which ranks abetting of suicide as manslaughter, a man who had abetted the suicide of a woman was recently convicted in Rochester and sentenced to twenty years' imprisonment.[1] Abetting unsuccessful attempts at suicide is naturally more leniently punishable, but the policy which renders such an abettor also liable to substantial penalty is in accordance with common sense and justice. It is certainly a serious defect in the law if a person who wishes to get rid of another can with impunity encourage and assist him to make way with himself. Some technical criticism has been offered on the New York statutes on the score that abettors are treated as more serious criminals than principals. The very simple answer is that they are. It is perfectly legitimate to subject the abettor of an attempt to imprisonment not exceeding seven years, while the attempter himself may not be imprisoned for more than two years and generally escapes without any punishment at all. The acts of a suicide and his abettor are essentially different; the one is merely an attempt to be rid of life; the other is an attempt to profit by indirectly causing another's death. Whatever may be thought of the status of the principal's offense, an accessory to suicide is guilty of murder in all the moral blackness that that term connotes. It is to be hoped that the legislatures of other states will not be deterred by merely technical or academic objections from adopting from New York and Missouri a very important legal reform.

The question remains whether legal provisions directly affecting an unsuccessful suicide himself are justifiable and expedient. Several references have already been made to the portions of Mr. Lecky's work on European Morals treating of suicide, which are valuable alike for their collation of the literature of the subject and the author's own enlightened and judicial views. The present writer, nevertheless, feels constrained to except to Mr. Lecky's sweeping dismissal of legal interference. He says: "Suicide is indeed one of those acts which may be condemned by moralists as a sin, but which, in modern times, at least, cannot be regarded as within the legitimate sphere of law; for a society which accords to

[1] See People *v.* Kent, *supra.*

its members perfect liberty of emigration cannot reasonably pronounce the simple renunciation of life to be an offense against itself." This is substantial Catonism, and the doctrine is not only in accord with the axioms of modern democracy, but is supported by the spirit of positive provisions of American constitutional law. It must not be overlooked, however, that much of the success of the English policy of government has been due to its very illogicality, its opportunism. America has inherited this policy and followed it even in the working of written constitutions.

The Federal constitution and the constitutions of the various states contain so-called bills of rights which safeguard individual liberty and private property in the broadest terms. Yet nothing is better settled than that these rights are not absolute, but merely relative; that they must yield to any legislation which the courts shall say is fairly to be considered for the public welfare. The nominal function under which the larger part of such legislation is upheld is the vague, confessedly indefinable "police power" of the state. This policy has been exercised and judicially sanctioned to such lengths during recent years that many conservatives are inclined to view the police power as the wooden horse of socialism.

The preservation of the public health — and under this may be included the prolongation of life and the prevention of death — is one of the most common spheres of exercise of the police power. Except in cases of suicidal paranoia, a form of mental disease distinctly recognized and classified by alienists, the liberty of a would-be suicide cannot be interfered with on the ground of insanity. Some writers, and even a few judges, have ventured the opinion that suicide is itself presumptive proof of insanity, an assumption abundantly refuted by every-day observation. Nevertheless, the present writer is of opinion that, as guardian of public health and life, and upon grounds analogous to those applied in controlling insane persons, the state may legitimately take temporary custody of persons with suicidal intent. If the majority of suicides were committed by people who were in normal mental and physical conditions and after mature deliberation, it would be difficult to answer Mr. Lecky's reasoning. As matter of fact suicide is usually the result of impulse, of temporary remorse, or discouragement. History furnishes numerous examples of men and women who, having unsuccessfully attempted suicide, have thereafter lived long and useful lives. Similar instances among persons not sufficiently important to get into history have probably been countless.

Under these considerations the state may well step in and save the would-be suicide from himself while the impulse lasts. Such course may be constitutionally illogical, but it is thoroughly practical, eminently salutary. If physical disease, or financial distress, or fear of disgrace has precipitated an attempt at suicide, medical treatment, or charitable aid, or the sympathy and encouragement of friends may reconcile the unfortunate to facing life again. It may be of very substantial utility to have authority forcibly to restrain him from repeating his attempt until after these outside influences shall have been brought to bear, and the normal love of life shall have had opportunity to reassert itself.

The state of New York has a statute which makes an attempt at suicide a crime punishable by imprisonment not exceeding two years, or by a fine not exceeding $1,000, or both.[1] The specific policy of this law is wrong. Public opinion is against it and it has proved unenforceable. During the year 1902 twenty-one cases, and during the first half of 1903, nine cases of attempted suicide were held for the grand jury by magistrates in the Boroughs of Manhattan and the Bronx of the City of New York. In every case the grand jury refused to find an indictment and the proceeding was dismissed. Such action was entirely satisfactory. The contention of Cato and Mr. Lecky is certainly valid to the extent that one who attempts suicide should not be treated as a criminal. The modern theory of penal legislation is prevention of future crime from which the factor of revenge is eliminated. It is quite plain that punishing an attempter would not deter others from making similar attempts; it would not even tend to discourage a second attempt by the same person. On the other hand, legislation touching would-be suicides would not, as has sometimes been semi-seriously suggested, tend to induce attempters to make assurance doubly sure. Criminal penalties might discourage spurious attempts at suicide for the sake of theatrical or sympathetic effect, but a person really resolved on taking his life would scarcely pause to consider his liability to fine or imprisonment if his plan should fail. Laws should be passed aiming to accomplish merely what probably has been accomplished in many cases by the existing law of New York in spite of its anomalous form. One who attempts suicide should be classed not as a criminal, but as an unfortunate person amenable to temporary deprivation of liberty.

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[1] §§ 174, 175, Penal Code.

He should be made subject to restraint in the discretion of a magistrate not exceeding a brief, definite period. Even extreme advocates of the view of Cato and Mr. Lecky ought to be reconciled to legislation of such limited scope, which probably would be instrumental in saving many lives, because the way can never be closed, even though it be temporarily blocked, against one who is calmly determined upon quitting the world.

Wilbur Larremore.